AMENDMENT TO MR. TAUZIN'S AMENDMENT

OFFERED BY MR. ALLEN

(Page & line nos. refer to Chairman's Mark of June 17, 2003)

In section 1807(i) of the Social Security Act (as proposed to be inserted by section 105) add at the end the following new paragraph:

''(7) GUARANTEE OF LOWEST PRICE FOR DRUGS FOR BENEFICIARIES.—

''(A) IN GENERAL.—Each participating manufacturer of a covered outpatient drug shall enter into arrangements with eligible entities offering the endorsed programs under this section to make available for purchase by such entities such covered outpatient drug at the price described in subparagraph (B). Those entities shall make available such prescription drugs to medicare beneficiaries enrolled under the endorsed program at that price.

''(B) DESCRIPTION OF PRICE.—The price at which a participating manufacturer shall make a covered outpatient drug available for purchase by a pharmacy is a price no greater than the manufacturer's average foreign price.

''(C) DEFINITIONS OF PARTICIPATING MANUFACTURER.—In this paragraph:

''(i) PARTICIPATING MANUFACTURER.—The term 'participating manufacturer' means any manufacturer of drugs or biologicals that, on or after the date of the enactment of this section, enters into a contract or agreement with the United States for the sale or distribution of covered outpatient drugs to the United States.

''(ii) AVERAGE FOREIGN PRICE.—

''(I) IN GENERAL.—The term 'average foreign price' means, with respect to a covered outpatient drug, the average price that the manufacturer of the drug realizes on the sale of drugs with the same active ingredient or ingredients that are consumed in covered foreign nations, taking into account—

''(aa) any rebate, contract term or condition, or other arrangement (whether with the purchaser or other persons) that has the effect of reducing the amount realized by the manufacturer on the sale of the drugs; and

''(bb) adjustments for any differences in dosage, formulation, or other relevant characteristics of the drugs.

''(II) EXEMPT TRANSACTIONS.—The Secretary may, by regulation, exempt from the calculation of the average foreign price of a drug those prices realized by a manufacturer in transactions that are entered into for charitable purposes, for research purposes, or under other unusual circumstances, if the Secretary determines that the exemption is in the public interest and is consistent with the purposes of this paragraph.

''(iii) COVERED FOREIGN NATION.—The term 'covered foreign nation' means Canada, France, Germany, Italy, Japan, and the United Kingdom.